

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact: _____, ID No.

Telephone Number: _____

Refer Reply To:
CC:FIP:B03
PLR-124611-20

Date:
February 24, 2021

Legend

- Taxpayer =
- Company 1 =
- Fund =
- Company 2 =
- Firm =
- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =
- Date 5 =
- Date 6 =
- Date 7 =
- Date 8 =
- Month =
- Year =

Dear _____ :

This ruling responds to a letter dated October 23, 2020, that was submitted on behalf of Taxpayer. Taxpayer requests an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations (“Regulations”) to make an election under § 856(c) of the Internal Revenue Code (“Code”) to be treated as a real estate investment trust (“REIT”) effective Date 1.

FACTS

Taxpayer, directly owned by Company 1 and indirectly owned by Fund, was formed as a single member limited liability company on Date 2. Taxpayer was treated as a disregarded entity for federal income tax purposes prior to timely filing Form 8832, *Entity Classification Election*, electing to be treated as an association taxable as a corporation effective Date 1.

Taxpayer intended to elect to be treated as a REIT under § 856 on its Form 1120-REIT, *Tax Return for Real Estate Investment Trusts*, for its initial, short taxable year beginning Date 1 and ending Date 3 (the First REIT Taxable Year). Taxpayer's limited liability company agreement and supplemental documents state that it "intended for the Company to qualify for treatment as a REIT under Code section 856." The agreement references this intent several times.

Company 2 provides management services to Fund. As part of its management services, Company 2 is responsible for tax matters and, more specifically, was responsible for making Taxpayer's REIT election. Company 2 regularly engages Firm for the preparation and filing of tax and information returns for entities managed by Company 2.

The filing of Form 7004 to extend the due date of Taxpayer's return for the First REIT Taxable Year was due on Date 4. In Month of Year, Firm timely prepared Taxpayer's Form 7004, *Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns*. Firm also prepared various other tax and information returns for entities managed by Company 2, which were electronically filed by Firm at that time. Due to a miscommunication between Company 2 and Firm, Taxpayer's Form 7004 was not timely filed. Specifically, Firm attempted but was unable to electronically file a Form 7004 for Taxpayer in early Month of Year. As a result, Firm instructed Company 2 that it would need to file a paper extension request; however, Firm's instructions in a letter dated early Month of Year were confusing and not understood by Company 2. Coupled with the confusion arising from COVID-19 office closures, Company 2 inadvertently failed to file a paper copy of the extension request. Company 2 believed that Firm had electronically filed Taxpayer's Form 7004 in Month of Year along with the other tax and information returns Firm had prepared at that time. Firm assumed that Company 2 filed Taxpayer's Form 7004 by paper based on its letter dated early Month of Year.

Taxpayer's Form 7004 would have extended the due date of its return and Form 1120-REIT for the First REIT Taxable Year from Date 4 to Date 5. Company 2 filed Taxpayer's return and Form 1120-REIT on Date 6, believing that such filing was timely. However, because Taxpayer's Form 7004 was not timely filed, Taxpayer's Form 1120-REIT was not timely filed.

On Date 7, as part of responding to a due diligence inquiry related to the proposed sale of Taxpayer's stock, Company 2 requested confirmation that Firm had filed Taxpayer's Form 7004. On Date 8, Firm informed Company 2 that it had not filed the Form 7004. Prior to the due diligence inquiry, both Company 2 and Firm had

believed that the other had timely filed the Form 7004 on behalf of Taxpayer. Taxpayer subsequently submitted this request to treat its election to be treated as a REIT under § 856(c) as effective Date 1.

Taxpayer makes the following additional representations:

1. The request for relief was filed by the Taxpayer before the failure to make the regulatory election was discovered by the IRS.
2. Granting the relief will not result in the Taxpayer having a lower tax liability in the aggregate for all years to which the regulatory election applies than Taxpayer would have had if the election had been timely made (taking into account the time value of money).
3. The Taxpayer did not seek to alter a return position for which an accuracy related penalty has been or could have been imposed under Section 6662 at the time Taxpayer requested relief and the new position requires or permits a regulatory election for which relief is requested.
4. Being fully informed of the required regulatory election and related tax consequences, the Taxpayer did not choose to not file the election.
5. Taxpayer is not using hindsight in requesting this relief. No specific facts have changed since the due date for making the election that makes this election advantageous to Taxpayer.
6. The period of limitations on assessment under Section 6501(a) has not expired for Taxpayer for the taxable year for which the election should have been filed, nor for any taxable year(s) that would have been affected by the election had it been timely filed.

Affidavits on behalf of Taxpayer have been provided with the submission as required by § 301.9100-3(e).

LAW AND ANALYSIS

Section 856(c)(1) provides that a corporation, trust, or association shall not be considered a REIT for any taxable year unless it files with its return for the taxable year an election to be a REIT or has made such an election for a previous taxable year, and such election has not been terminated or revoked. Pursuant to § 1.856-2(b) of the Income Tax Regulations, the election shall be made by the trust by computing taxable income as a REIT in its return for the first taxable year for which it desires the election to apply.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all

subtitles of the Code except subtitles E, G, H, and I. Section 301.9100-1(b) defines a regulatory election to mean an election whose due date is prescribed by a regulation, revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

Section 301.9100-3(a) through (c)(1) sets forth rules that the Service generally will use to determine whether, under the particular facts and circumstances of each situation, the Commissioner will grant an extension of time for regulatory elections that do not meet the requirements of § 301.9100-2. Section 301.9100-3(a) provides that requests for relief subject to this section will be granted when the taxpayer provides the evidence (including affidavits described in § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Section 301.9100-3(b) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer (i) requests relief under this section before the failure to make the regulatory election is discovered by the Service; (ii) failed to make the election because of intervening events beyond the taxpayer's control; (iii) failed to make the election because, after exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity for the election; (iv) reasonably relied on the written advice of the Service; or (v) reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election. A taxpayer will not be considered to have reasonably relied on a qualified tax professional if the taxpayer knew or should have known that the professional was not (i) competent to render advice on the regulatory election, or (ii) aware of all relevant facts. A taxpayer will be deemed to have not acted reasonably and in good faith if the taxpayer (i) seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under § 6662 at the time the taxpayer requests relief and the new position requires or permits a regulatory election for which relief is requested; (ii) was informed of the required election, but chose not to file the election; or (iii) uses hindsight in requesting relief.

Section 301.9100-3(c)(1) provides that a reasonable extension of time to make a regulatory election will be granted only when the interests of the Government will not be prejudiced by the granting of relief. Section 301.9100-3(c)(1)(i) provides that the interests of the Government are prejudiced if granting relief would result in a taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made (taking into account the time value of money). Section 301.9100-3(c)(ii) provides that the interests of the Government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made or any taxable years that would have been affected by the election had it been timely made are closed by the period of limitations on assessment under § 6501(a) before the taxpayer's receipt of a ruling granting relief under this section.

CONCLUSION

Based on the information submitted and the representations made, we conclude that Taxpayer has satisfied the requirements for granting a reasonable extension of time to elect under § 856(c) to be treated as a REIT effective Date 1.

Accordingly, due to the reasonable extension of time granted to Taxpayer, Taxpayer's Form 1120-REIT filed on Date 6 for the First REIT Taxable Year is considered a timely election under § 856(c) to be treated as a REIT under subchapter M of the Code effective Date 1.

This ruling is limited to the timeliness of the filing of Taxpayer's election under § 856(c). This ruling's application is limited to the facts, representations, Code and regulation sections cited herein. No opinion is expressed with regard to whether Taxpayer otherwise qualifies as a REIT under subchapter M of the Code.

Except as specifically provided otherwise, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

The rulings contained in this letter are based upon information and representations submitted by the Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Patrick E. White
Senior Counsel
(Financial Institutions & Products)

cc: